

**MINUTES OF THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

*Allen v. United States*

Case No. 3:04-cv-00131-JKS

By: THE HONORABLE JAMES K. SINGLETON

Deputy Clerk: Linda Christensen, Case Management: 677-6104\*

PROCEEDINGS: ORDER FROM CHAMBERS

The joint proposed pretrial order submitted by the parties at Docket No. 86 is **ACCEPTED** and will be adopted as the final pretrial order in this case. As such, it shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice. The parties should be prepared to discuss it at the final pretrial conference on Monday, June 11, 2007.

**IT IS SO ORDERED.**

Entered at the direction of the Honorable James K. Singleton, United States District Court Judge.

DATE: June 11, 2007

\* ALL INQUIRIES REGARDING THE SCHEDULING OR CALENDARING OF THIS CASE SHOULD BE DIRECTED TO THE ABOVE INDICATED CASE MANAGER.

Any request for other information or for clarification, modification, or reconsideration of this Order, or for extension of time must be made in the form of a motion. See FED. R. CIV. P. 7(b)(1); D. Ak. LR 7.1(l). No one should telephone, fax, or write to chambers regarding pending cases. The Judge's secretary and law clerks are not permitted to discuss any aspect of this case, provide any information, or communicate with any person, including litigants, lawyers, witnesses, and the general public regarding pending cases.

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4 E mail: \_\_\_\_\_  
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

10 KIMBERLY ALLEN, Personal                          )  
11 Representative of the Estate of TODD              ) Case No. 3:04-CV-0131-JKS  
12 ALLEN, Individually, on behalf of                )  
13 the Estate of TODD ALLEN, and on                )                                   **• PRETRIAL ORDER**  
14 behalf of the Minor Child, PRESLEY              )  
15 GRACE ALLEN,                                        )  
16   )  
17 Plaintiff,    )  
18 vs.    )  
19 UNITED STATES OF AMERICA,                        )  
20 Defendant.    )  
\_\_\_\_\_  
17

**I. PARTIES**

18       The parties are Kimberly Allen, on behalf of herself, her minor daughter, Presley Grace  
19 Allen, and the Estate of Todd Allen, and the United States.

20       Kimberly Allen was married to the deceased, Todd Allen.

1       The United States, pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C.  
 2 §§ 2671-80, is deemed to employ the Alaska Native Medical Center ("ANMC") health care  
 3 providers whose care, Mrs. Allen contends, was negligent and caused the death of Todd Allen.

## 4                   **II. JURISDICTION**

5       This court has jurisdiction under the FTCA. Jurisdiction is not disputed.

## 6                   **III. SCHEDULE OF TRIAL**

7       Trial is scheduled to commence on June 25, 2007 at the Federal District Court in  
 Anchorage, Alaska. Because this case falls under the FTCA, it will be a court-tried case.  
 8

## 9                   **IV. NATURE OF ACTION**

10      This is a medical malpractice case wherein the plaintiff seeks damages for the alleged  
 11 wrongful death of Todd Allen and for alleged personal injuries sustained by Mr. Allen and  
 herself. Alaska substantive law applies and federal procedural law applies.  
 12

## 13                  **V. LEGAL ISSUES ALREADY DECIDED BY THE COURT**

14      The Court allowed Mrs. Allen to amend her complaint to add a claim of negligent  
 15 infliction of emotional distress but did not determine whether or not the claim was barred by  
 16 the statute of limitations [dkt # 27]. The statute of limitations issue was addressed in Mrs.  
 17 Allen's trial brief [dkt # 79].

18      The Court denied plaintiff's motions in limine concerning shifting the burden of proof  
 19 and limiting the testimony of defendant's experts, pending the Court's review of the evidence  
 presented at trial. [dkt # 76].  
 20

## **VI. JOINT STATEMENT OF ISSUES**

This is a medical malpractice case and under Alaska law, Mrs. Allen has the burden of proving by a preponderance of the evidence the following:

(1) The degree of knowledge or skill possessed or the degree of care ordinarily exercised under the circumstances, at the time of the act complained of, by health care providers in the field or specialty in which the defendant is practicing;

(2) That the ANMC health care providers lacked this degree of knowledge or skill or that the ANMC health care providers failed to exercise this degree of care.

(3) That the negligence of the ANMC providers was the legal cause of Todd Allen's suffering and death and the cause of Kim Allen's injuries.

AS 9.55.540 (1976).

As argued in plaintiff's Motion for Ruling Regarding Proof of Causation, she will be seeking to shift the burden of proof regarding causation onto the United States once she proves that the standard of care was breached by the Government. This issue has been briefed by both parties. [Dkt ## 41, 42, 53, 56].

With respect to Mrs. Allen's claim for negligent infliction of emotional distress, Mrs. Allen has the burden of proving by a preponderance of the evidence that she suffered emotional distress as a result of her being with her husband in the Microtel room and seeing him go into respiratory arrest with what she believed to be blood coming from his mouth.

## **VII. STIPULATED STATEMENT OF FACTS**

1. On April 19, 2003, Donna Fearey was an Advanced Nurse Practitioner (“ANP”) employed by ANMC.

1       2. On April 19, 2003, Patricia Ambrose was a Registered Nurse employed by  
2 ANMC.

3       3. On April 19, 2003, Mr. Todd Allen was 36 years old.

4       4. Mr. Allen's birth date is March 30, 1967.

5       5. Kim Allen and Todd Allen were married on June 8, 2003.

6       6. On April 19, 2003, Mrs. Allen was approximately three months pregnant with  
7 Mr. Allen's child.

8       7. On April 19, 2003, Mr. Allen was employed full time for TCC.

9       8. Mr. Allen had been employed by TCC since 2000.

10      9. Early on the morning of April 19, 2003, Mr. Allen presented at the Alaska Native  
11 Medical Center Emergency Department ("ANMC ED") with his wife, Kimberly Allen.

12      10. Nurse Ambrose is the nurse that triaged Mr. Allen the morning of April 19, 2003.

13      11. Nurse Ambrose triaged Mr. Allen to the ANMC Urgent Care Center ("UCC").

14      12. The ANMC Emergency Department has two sections, the Emergency Room  
15 ("ER") and the UCC.

16      13. The ER is staffed by physicians and registered nurses.

17      14. The UCC is staffed by ANPs, physician's assistants, and Licensed Practical  
Nurses.

18      15. ANP Donna Fearey was the care provider at the UCC who evaluated Mr. Allen  
19 the morning of April 19, 2003.

20      16. Mr. Allen was discharged from ANMC at approximately 8:15 a.m. that morning.

1       17. Mr. Allen was in a pedestrian/motor vehicle accident on November 22, 1999,  
 2 where he was a pedestrian hit by a motor vehicle.

3       18. Mr. Allen suffered a jaw fracture as a result of the November 1999 automobile  
 4 accident.

5       19. Mr. Allen had surgery on his jaw the same day as the accident.

6       20. Mr. Allen's right jaw was replaced in a second surgery on June 2001.

7       21. Mr. Allen had entered into a chronic pain contract with ANMC in January 2003.

8       22. Mr. Allen had received a refill of his prescription pain medications on April 18,  
 2003.

9       23. At 3:47 p.m. on April 19, 2003, Mrs. Allen called ANMC about her husband.

10      24. At about 5:11 p.m. on April 19<sup>th</sup>, Mrs. Allen called 911 about her husband.

11      25. Mr. Allen was taken to Providence Alaska Medical Center ("PAMC") where he  
 12 was seen by emergency room physician, Dr. Susan Dietz.

13      26. A CT scan was taken of Mr. Allen's brain at approximately 6:47 p.m.

14      27. Mr. Allen was admitted to PAMC by Dr. Loretta Lee.

15      28. Mr. Allen was declared dead on April 20, 2007.

16      29. Mr. Allen is survived by his wife, Kimberly Allen, and his minor daughter,  
 17 Presley Grace Allen.

18      30. Kimberly Allen's birth date is May 16, 1970.

19      31. Presley Grace Allen's birth date is October 18, 2003.

## VIII. CONTESTED ISSUES OF FACT AND LAW

**A. The Following Are the Issues of Fact to Be Tried and Decided:**

**Issue 1:** Did Nurse Ambrose, the triage nurse, breach the standard of care.

**Plaintiff contends:** Nurse Ambrose did not exercise the degree of care ordinarily exercised when she triaged Mr. Allen to the UCC to see a mid-level practitioner when the standard of care required that he be triaged to see an emergency room physician.

**Defendant contends:** Nurse Ambrose is an experienced triage nurse and it was appropriate for her to use her experience to assess the patient's need to see a physician versus an ANP.

**Issue 2:** What information was communicated to the ANP on the morning of April 19th by Todd Allen.

**Plaintiff contends:** Mr. Allen conveyed that, among other things, he had a severe headache associated with nausea and vomiting.

**Defendant contends:** Mr. Allen conveyed, among other things, that he had ear and jaw pain that was similar to his chronic pain.

**Issue 3:** Did ANP Fearey breach the standard of care.

**Plaintiff contends:** ANP Fearey breached the standard of care by not ruling out a subarachnoid bleed.

**Defendant contends:** ANP Fearey did not breach the standard of care and reasonably concluded that Mr. Allen was experiencing an episode of his chronic pain.

1           **Issue 4:** Did any negligence on the part of Nurse Ambrose and/or ANP Fearey cause  
 2 Todd Allen's injury and death.

3           **Plaintiff contends:** The triage decision ensured that Mr. Allen would be seen by  
 4 a mid-level practitioner; had Mr. Allen been seen by a physician his true condition, a  
 5 subarachnoid bleed, would have been diagnosed and Mr. Allen would have been admitted to  
 6 the hospital and provided appropriate medical care and would not have suffered to the extent  
 7 he did on April 19th and he would have lived with a good outcome; alternatively had ANP  
 8 Fearey's care met the standard of care, Mr. Allen's true condition would have been diagnosed  
 9 and he would not have suffered to the extent he did and he would have lived with a good  
 outcome.

10           **Defendant contends:** Mr. Allen had a catastrophic subarachnoid hemorrhage ("SAH"),  
 11 due to bleeding or rebleeding from a ruptured cerebral aneurysm in the early afternoon of  
 12 April 19, 2003, and that this SAH caused his coma and death. Even assuming that Mr. Allen  
 13 had been diagnosed by ANP Fearey or by an emergency room doctor as possibly having a  
 14 SAH during the morning of April 19<sup>th</sup> at ANMC, Mr. Allen could not have been examined at  
 15 ANMC, then transported to another Anchorage hospital for diagnostic studies, and then  
 16 medevaced to Seattle for surgical treatment before he suffered his catastrophic SAH and coma,  
 17 in the afternoon of 19<sup>th</sup>.

18           **Issue 5:** If there was negligence that caused Todd Allen's injuries and death and Mrs.  
 19 Allen's injury, what would be the appropriate compensation.

1                   **Plaintiff contends:** The economic losses are approximately \$1,500,000. In  
 2 addition, there are three non-economic damages caps that apply as set forth in Mrs. Allen's  
 3 trial brief (for Mr. Allen's survival claim, for his death and for Mrs. Allen's negligent infliction  
 4 of emotional distress claim) [dkt # 79].

5                   **Defendant contends:** Mr. Allen's estimated past and future economic losses are  
 6 approximately \$1,020,000, and that any damages award should be reduced by the past and  
 7 future Social Security benefit payments received by Mrs. Allen and Presley Allen as a result of  
 8 Mr. Allen's death, pursuant to AS 09.55.548(b). Defendant contends that the noneconomic  
 9 damages limit in AS 09.17.010 applies to all claims for the alleged injuries and death of  
 10 Mr. Allen and that the alleged multiple injuries sustained by Mr. Allen shall be treated as a  
 11 single injury under AS 09.17.010(d).

12                  **B. The Following Are the Issues of Law To Be Tried and Determined:**

13                  **Issue 1:** What is the standard of care that applies in this case.

14                  **Plaintiff contends:** There is one standard of care that applies to the ANMC  
 15 emergency department in this case whether or not Mr. Allen was seen by a physician or an  
 16 ANP.

17                  **Defendant contends:** A higher standard of care may apply to emergency room  
 18 physicians than to an ANP.

19                  **Issue 2:** Should the burden of proof regarding causation be shifted to the government if  
 20 and when the plaintiff proves that the standard of care was breached in the case

**Plaintiff contends:** The burden should be shifted as detailed in her Motion In Limine. [dkt ## 41, 42, 56].

**Defendant contends:** The burden of proof should remain with the plaintiff as provided in AS 09.55.540 and argued in Defendant's opposition to plaintiff's Motion in Limine [dkt # 53].

**Issue 3:** Did the government owe Mrs. Allen a duty of care with respect to her claim for negligent infliction of emotional distress.

**Plaintiff contends:** As a matter of law, the government owed Mrs. Allen a duty of care in this case.

**Defendant contends:** The question of legal duty and legal requirements for Mrs. Allen's claim for negligent infliction of emotional distress depend on the evidence to be presented at trial and cannot be determined as a matter of law.

## **IX. GENERAL QUESTIONS FOR THE JURY, VOIR DIRE JURY**

## **QUESTIONNAIRE, PRELIMINARY JURY INSTRUCTIONS, JURY INSTRUCTIONS, AND SPECIAL VERDICT FORMS**

This is not applicable in this case.

## X. EXHIBITS

The parties will likely have resolved their differences in exhibits relating to medical records by the pretrial conference. Plaintiff continues to object to the admission of Nurse Fearey's personnel file.

1 **PLAINTIFF'S EXHIBITS**

2 It is difficult for Plaintiff to accurately determine the order in which her exhibits will be  
 3 offered at trial. The use and order of the exhibits will depend on the nature of the testimony of  
 4 the witnesses. With this limitation, she expects that her exhibits will be offered in the  
 5 following general order:

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-13	ANMC ED/Urgent Care Center Triage Policy [ANMC 0894- 0904]		X	
P-3	Triage/ER record. 4/19/03 [ANMC 1]		X	
P-14	ANMC ED/UCC Regarding Telephone Advice [ANMC 0905-0907]	X		
D-1	Todd Allen Medical Records	X		
D-1A	Todd Allen Medical Records	X		
P-42	DVD deposition of Patricia Ambrose	X		
D-33	Deposition of Patricia Ambrose, RN	X		
P-17	ED/UCC Nurse Practitioner Job Description Signed 1998 [ANMC 0796-800]		X	
P-18	ED/UCC Nurse Practitioner Job Description Signed 2000 [ANMC 0792-795]		X	
D-8	C.V. of Donna Fearey		X	

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-4	Emergency Visit Record Transcribed by Donna Fearey. [ANMC 0755]		X	
D-42	Deposition of Donna Fearey, A.N.P.	X		
P-5	Dr. Dietz ER Report [Allen (Providence) 59 – 62]		X	
D-38	Deposition of Dr. Susan Dietz	X		
D-10	Expert Report of Dr. Robert Cantu	X		
D-18	Expert Report of Dr. Frank Mannix	X		
P-15	ANMC ER Department Statistics 4/19/03 [ANMC 1004 – 1014]	X		
P-16	ANMC Workload ER/UCC April 2003 [ANMC 1015]	X		
P-7	Dr. Lee Dictated Note [Allen (Providence) 21 – 23]		X	
P-6	Dr. Downs Dictated Consult [Allen (Providence) 19-20]		X	
P-9	Providence Progress Notes [Allen (Providence) – 25 – 30]		X	
P-8	Dr. Lee Dictated Discharge Summary [Allen (Providence) 17 – 18 ]		X	
D-43	Deposition of Roberta Lee	X		
D-2	Providence Alaska Medical Center CT Scan Film and Report for Todd Allen		X	
P-23	Letters of Administration for Todd Allen's Estate		X	

EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-11	Kimberly Allen Cell Phone Record 4/19/03.		X	
P-24	Wedding Photo of Todd and Kimberly Allen [Photo – 3]		X	
P-25	Wedding photo of Todd Allen and family [Photo – 1]		X	
P-26	Wedding photo – Todd and Kim Allen and family [Photo – 5]		X	
P-27	Photo of Todd Allen/photo Kim and Presley Allen [Photo – 4]		X	
P-28	Photo of Todd with family member. [Photo – 6]		X	
P-12	Death Certificate for Todd Allen. [Allen (death cert.) 1]		X	
D-21A	Revised C.V. of Elda Ramirez		X	
D-20	Expert Report of Elda Ramirez, R.N.	X		
D-11	C.V. of Dr. Robert Cantu		X	
D-10	Expert Report of Dr. Robert Cantu	X		
D-27	C.V. of Susan Shott, Ph.D.		X	
D-26	Expert Report of Susan Shott, Ph.D.	X		
D-57	Addendum to Expert Report of Susan Shott	X		
D-14	Expert Report of John Finch, Ph.D.	X		

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FRIEDMAN, RUBIN & WHITE  
 1126 Highland Avenue  
 Bremerton, Washington 98337  
 Phone: (360) 782-4300  
 Facsimile: (360) 782-4358

EXH #	DESCRIPTION	IDEN	ADM	OBJ
D-15	C.V. of John Finch, Ph.D.		X	
P-19	Todd Allen's Tax Return 2000 [IRS 0511-0519]		X	
P-20	Todd Allen's Tax Return 2001 [IRS 0520-0526]		X	
P-21	Todd Allen's Tax Return 2002 [IRS 0527-0532]		X	
P-22	Todd Allen's Tax Return 2003 [IRS 0533- 0538]		X	
P-40	Laborer's Union Wage Rates 2002 – 2007 [2 – 10]	X		
P-39	Todd Allen Employment Records Excerpt	X		
P-30	John Finch's Table of Calculations of Past and Future Economic Losses	X		
P-1	Mission Statement of ANMC Emergency Department. [ANMC 0946]		X	
P-2	Corporate Goals of South Central Foundation in effect in April, 2003 relating to the ANMC Urgent Care Center. [ANMC 0947 – 0949]		X	
P-36	ANMC Staff/Provider Scheduling 1/03 - 4/03 [ANMC 0965, 0993]	X		
P-37	UCC/ER number of patients seen 2000-2003 [ANMC 1121]	X		
P-38	UCC provider schedule [ANMC 1111]	X		
D-9	C.V. of Dr. Richard Brodsky		X	

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EXH #	DESCRIPTION	IDEN	ADM	OBJ
P-34	Exhibit 4 to Nurse Duntze's Deposition	X		
D-44	Deposition of Dr. Michael Levy	X		
D-53	Deposition of Dr. Ronald Shallat	X		
P-35	Aneurysm Illustration	X		
P-43	DVD deposition of Nurse Duntze	X		
D-49	Deposition of Dr. Richard Rubenstein	X		
P-31	Exhibit 3 to Dr. Rubenstein's Deposition	X		
P-32	Exhibit 13 to Dr. Rubenstein's Deposition	X		
P-33	Exhibit 14 to Dr. Rubenstein's Deposition	X		

### DEFENDANT'S EXHIBITS

It is difficult for Defendant to accurately determine the order in which Defendant's exhibits will be offered at trial. The use and order of the exhibits will depend on the nature of the testimony of the witnesses. With this limitation, Defendant expects that its exhibits will be offered in the following general order:

Exhibit D-1              Id

Exhibit D-1A              Id

Exhibit D-2              Adm

1                   Exhibit D-3               Id

2                   Exhibit D-4               Adm

3                   Exhibit D-5               Adm

4                   Exhibit D-6               Adm

5                   Exhibits D-8 to D-29 are the C.V.'s (Adm) and reports (Id) for the respective witnesses  
 6 and expert witnesses. Defendant expects that these exhibits may be used or offered during the  
 7 testimony of the respective witnesses.

8                   Exhibits D-30 to D-57 are the deposition testimony and deposition exhibits (all Id) for  
 9 the respective witnesses and expert witnesses. Defendant expects that these exhibits may be  
 10 used or offered during the testimony of the respective witnesses.

11                  Exhibit D-58 Id

## 12                  **XI. WITNESS LISTS**

### 13                  **PLAINTIFFS' WITNESSES**

14                  Plaintiff intends to call the following witnesses in the order stated to the extent possible:

- 15                  1.     Patricia Ambrose  
 16                            25 Third Avenue, SW  
                             Cut Bank, MT 59427  
                             Phone: (406) 873-2049

17                  Ms. Ambrose is a fact witness. Ms. Ambrose is the registered nurse who was  
 18 working at the ANMC ED the morning of April 19, 2003, and who evaluated and triaged Todd  
                          Allen. Ms. Ambrose's care is at issue in this case and she will testify regarding her decision  
 19 the morning of April 19, 2003 to triage Todd Allen to the UCC to see a mid-level practitioner

1 as opposed to triaging Mr. Allen to see an emergency room physician on the Emergency Room  
 2 side of the ED.

3 Ms. Ambrose will be called at trial by videotaped deposition.

4 2. Donna Fearey, ANP  
 5 c/o Gary Guarino  
 U.S. Attorney's Office  
 District of Alaska  
 6 222 W. 7th Avenue, Room 253  
 Anchorage, AK 99513  
 Phone: (907) 271-5071

7 Ms. Fearey is a fact witness and the mid-level practitioner who evaluated Todd  
 8 Allen on the morning of April 19, 2003 at ANMC who, plaintiff contends, failed to appreciate  
 9 the significance of Mr. Allen's presenting symptoms the morning of April 19, 2003 and who  
 10 failed to rule out the fact that Mr. Allen had a subarachnoid hemorrhage. Ms. Fearey will  
 11 testify regarding her examination of Mr. Allen the morning of April 19, 2003.

12 Ms. Fearey will be called at trial.

13 3. Susan Dietz, MD  
 14 c/o Howard Lazar  
 Delaney, Wiles, Hayes, Gerety, Ellis & Young, Inc.  
 15 1007 W. 3rd Avenue, Suite 400  
 Anchorage, AK 99501  
 Phone: (907) 279-3581

16 Dr. Dietz is a fact witness and the emergency room physician at PAMC who  
 17 provided emergency services to Todd Allen after Mr. Allen was transported to PAMC by  
 18 paramedics after 5:00 p.m. on April 19, 2003. Dr. Dietz will testify regarding her care of  
 19 Mr. Allen and the statements made by Mrs. Allen regarding her husband's condition that day  
 20 which were made for the purposes of medical diagnosis and/or treatment.

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 Facsimile: (360) 782-4358

1 Dr. Dietz will be called at trial in person or by deposition.

2 4. Frank Mannix, M.D.  
 3 1238 Rubenstein Avenue  
 4 Cardiff By The Sea, CA 92007  
 5 Phone: (760) 942-8652

6 Dr. Mannix is an expert in emergency room medicine and will testify regarding  
 7 the standard of care applicable to the triage nurse and mid-level practitioner in this case and  
 8 how Nurse Ambrose's triage decision was negligent, how Nurse Fearey's evaluation and care  
 9 of Mr. Allen was negligent and that the advice given to Mrs. Allen on the phone by ANMC  
 personnel in the afternoon of April 19, 2003 was negligent. Dr. Mannix was deposed and will  
 testify to any other issues discussed in his deposition.

10 Dr. Mannix will be called at trial.

11 5. Loretta Lee, MD  
 12 c/o Howard Lazar  
 13 Delaney, Wiles, Hayes, Gerety, Ellis & Young, Inc.  
 14 1007 W. 3rd Avenue, Suite 400  
 Anchorage, AK 99501  
 15 Phone: (907) 279-3581

16 Dr. Lee is a fact witness and an internal medicine physician who admitted Todd  
 17 Allen to PAMC on April 19, 2003 and who attended to him until his death on April 20, 2003.  
 18 Dr. Lee will testify regarding her care of Mr. Allen, Mr. Allen's condition, his death and the  
 statements made by Mrs. Allen regarding her husband's condition that day which were made  
 for the purposes of medical diagnosis and/or treatment.

19 Dr. Lee will likely be called at trial.

1           6. Kimberly Allen  
 2           c/o Friedman, Rubin & White  
 3           1126 Highland Avenue  
 4           Bremerton, WA 98337  
 5           Phone: (360) 782-4300  
 6           Attorney Client Privilege Applies

7           Kim Allen is the plaintiff in the case. She is the personal representative of her  
 8           deceased husband's estate and the parent of Presley Grace Allen. Mrs. Allen is a fact witness  
 9           who accompanied her husband, Todd Allen, to ANMC on the morning of April 19, 2003.  
 10          Mrs. Allen will testify regarding the events on the evening of April 18th, the events  
 11          surrounding her husband's visit to the ANMC Emergency Department on April 19th, the  
 12          events surrounding her call to ANMC at around 3:47 p.m. later that day, her experience dealing  
 13          with her husband going into respiratory arrest in their hotel room and what has happened as a  
 14          result of her losing her husband and the father of her only daughter.

15          Ms. Allen will be called at trial.

16          7. Elda Ramirez, PhD, MSN, RN, FNP, CS, CEN  
 17          Assistant Professor of Nursing, Clinical  
 18          The University of Texas  
 19          School of Nursing at Houston  
 20          501 W. 25th Street  
 21          Houston, TX 77008  
 22          Phone: (713) 500-2162

23          Dr. Ramirez is an expert in emergency room nursing and may testify regarding  
 24          the standard of care applicable to the triage nurse and nurse practitioner and the fact that the  
 25          standard of care was breached by Nurse Ambrose and Nurse Fearey.

26          Dr. Ramirez may be called at trial by videotaped deposition.

1       8.     Dr. Robert Cantu, M.D.  
 2           John Cuming Building  
 3           131 ORNAC – Suite 820  
 4           Concord, MA 01742  
 5           Phone: (978) 369-1386

6           Dr. Cantu is an expert in neurosurgery and will testify regarding his opinions that  
 7           a CT taken the morning of April 19th would have discovered Mr. Allen's brain bleed and that  
 8           had his bleed been discovered, how he would have been medically treated and that he, more  
 9           likely than not, would have had a good outcome. Dr. Cantu will testify that the CT scan taken  
 10          at PAMC at 6:47 p.m. on April 19th revealed that Mr. Allen's brain showed extensive swelling  
 11          which more likely than not had been progressing throughout the day of April 19th and which  
 12          could have been prevented/treated had Mr. Allen's subarachnoid bleed been diagnosed the  
 13          morning of April 19, 2003.

14           Dr. Cantu will be called via videotaped deposition.

15       9.     Susan Shott, Ph.D.  
 16           Statistical Communications  
 17           7707 Shields Road  
 18           Harvard, IL 60033  
 19           Phone: (312) 203-3805

20           Dr. Shott is an Associate Professor in the Department of Medicine at Rush  
 21          University Medical Center and is an expert in medical biostatistics and statistical analysis.  
 22          Dr. Shott will testify that Mr. Allen's probability of survival with independent function had  
 23          Mr. Allen's subarachnoid bleed been diagnosed the morning of April 19, 2003 was over 90%.  
 24          Dr. Shott will also testify regarding Mr. Allen's probable life expectancy and work-life  
 25          expectancy had his subarachnoid bleed been timely diagnosed.

1 Dr. Shott will be called at trial.

2 10. Lloyd Kompkoff  
 P.O. Box 2902  
 Valdez, AK 99686  
 Phone: (907) 834-6727

3  
 4 Mr. Kompkoff is a fact witness. Mr. Kompkoff was supervising Mr. Allen at his  
 5 job at TCC at the time of Mr. Allen's death. Mr. Kompkoff was also friends with Mr. and  
 6 Mrs. Allen. Mr. Kompkoff will testify about Mr. Allen's work abilities and skills, his work  
 7 ethic, as well as his contributions to his family and the community as a fisherman, provider,  
 8 husband, friend and mentor.

9 11. Dr. John L. Finch, Ph.D.  
 10 2018 163rd Street, S.E.  
 Millcreek, WA 98012  
 Phone: (206) 363-1640

11 Dr. Finch is an expert economist and will testify regarding the economic losses in  
 12 this case.

13 Dr. Finch will be called at trial unless the parties reach a consensus regarding the  
 14 economic losses in the case.

15 11. Myra Allen  
 16 P.O. Box 1836  
 Cordova, AK 99574  
 Phone: (907) 424-3684

17 Myra Allen is Todd's mother and a fact witness. Mrs. Allen may testify about  
 18 Todd and Kim's relationship, and the losses experienced by Kim, the family and the  
 19 community as a result of Todd's death.

20 Myra Allen will likely be called at trial.

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**FRIEDMAN, RUBIN & WHITE**  
 1126 Highland Avenue  
 Bremerton, Washington 98337  
 Phone: (360) 782-4300  
 Facsimile: (360) 782-4358

1      **DEFENDANT'S WITNESSES**

2      **Witnesses That Shall Be Called At Trial**

3      1. Kimberly Allen  
       c/o Friedman, Rubin & White  
       1126 Highland Avenue  
       Bremerton, WA 98337  
       Phone: (360) 782-4300

6      Defendant expects that it will question Mrs. Allen when she is called as a witness  
 7      during Plaintiff's case-in-chief. Defendant reserves the right to recall Mrs. Allen in its defense  
 8      case. Mrs. Allen is expected to testify regarding Mr. Allen, his prior accident and medical  
 9      history, the events in April 2003 that are involved in this case, and Plaintiff's negligence and  
 damages claims. See Mrs. Allen's prior discovery depositions.

10     2. Pat Ambrose, R.N.  
       25 Third Avenue, South West  
       Cut Bank, Montana 59427  
       Phone: (406) 873-2049

13     Defendant expects that it will question Nurse Ambrose when she is called as a  
 14      witness during Plaintiff's case-in-chief. Defendant reserves the right to call Nurse Ambrose in  
 15      its defense case. Nurse Ambrose is expected to testify by deposition or telephonically. Nurse  
 16      Ambrose has been deposed and she is expected to testify regarding the issues raised in her  
 17      deposition including her education, training, experience, and duties as a registered nurse, her  
 18      experience, duties, and practices as a registered nurse working in ANMC's emergency  
 19      department, her knowledge and experience regarding patient triage and symptoms of chronic  
 20      pain or subarachnoid hemorrhage, and her knowledge, observations, and actions relating to her  
 assessment of Mr. Allen's condition and her triage of Mr. Allen at ANMC on April 19, 2003.

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**FRIEDMAN, RUBIN & WHITE**  
 1126 Highland Avenue  
 Bremerton, Washington 98337  
 Phone: (360) 782-4300  
 Facsimile: (360) 782-4358

1       3.     Donna Fearey, A.P.N.  
 2              State of Alaska Nurse Epidemiologist  
 3              Anchorage, Alaska  
 4              Phone: (907) 748-2687

5              Defendant expects that it may question ANP Fearey when she is called as a  
 6              witness in Plaintiff's case-in-chief. Defendant reserves the right to call ANP Fearey in its  
 7              defense case. ANP Fearey has been deposed and she is expected to testify regarding the issues  
 8              raised in her deposition including her education, training, experience, and duties as a  
 9              Registered Nurse and an Advanced Nurse Practitioner, her experience, duties, and practices as  
 10             an Advanced Nurse Practitioner working in ANMC's emergency department, her knowledge  
 11             and experience regarding patient triage and the symptoms of chronic pain or subarachnoid  
 12             hemorrhage, and her knowledge, observations, and actions relating to her exam, interview, and  
 13             assessment of Mr. Allen at ANMC on April 19, 2003.

14       4.     Dr. Richard Brodsky  
 15              Medical Director ANMC Emergency Department  
 16              Alaska Native Medical Center  
 17              4315 Diplomacy Drive  
 18              Anchorage, AK 99508  
 19              Phone: (907) 563-2662

20              Dr. Brodsky has been deposed and he is expected to testify regarding the subjects  
 21              and medical issues that he was questioned about at his deposition, including his medical  
 22              training and experience, his duties and experience as ANMC Medical Director and physician  
 23              for the Emergency Department, the staffing and operation of ANMC's emergency care and  
 24              urgent care clinic, the procedures for intake, triage, examination, and treatment of patients in  
 25              the ANMC Emergency Department, his knowledge and experience regarding ANP Fearey's

1 skills and work at the ANMC urgent care clinic, the information in the ANMC medical records  
 2 regarding Mr. Allen's intake, triage, exam, and assessment on April 19, 2003, the medical  
 3 technology and diagnostic or treatment procedures available at ANMC in April 2003, the  
 4 practices and procedures at ANMC for the assessment and treatment of patients suspected of  
 5 having a subarachnoid hemorrhage or aneurysm, including the transfer and medevac of  
 6 patients to other medical facilities, and ANMC's chronic pain program.

- 7       5. Susan Edwards, L.P.N.  
 8           Alaska Native Medical Center  
 9           4315 Diplomacy Drive  
 10          Anchorage, AK 99508  
 11          Phone: (907) 563-2662

12           Nurse Edwards has been deposed and she is expected to testify regarding the  
 13 issues raised in her deposition including her education, training, experience, and duties as a  
 14 Licensed Practical Nurse, her experience, duties, and practices as an L.P.N. working in  
 15 ANMC's Emergency Department, and her knowledge, observations, and actions relating to her  
 16 contacts with Mr. Allen and his discharge from ANMC on April 19, 2003.

- 17       6. Dr. Michael Levy (Expert Witness)  
 18           Emergency Medicine and Internal Medicine  
 19           12146 Rainwater Dr.  
 20          Eagle River, AK 99577  
 21          Phone: (907) 696-7386

22           Dr. Levy has produced a written report and has been deposed. He is expected to  
 23 testify regarding the medical issues, information, and opinions that were included in his report  
 24 and/or that were raised during his deposition including his education, training, and experience  
 25 as a physician, his knowledge and experience regarding the treatment, transfer, and emergency

1 medevac of patients like Mr. Allen, his knowledge and experience regarding the symptoms,  
 2 condition, assessment, diagnosis, and treatment in the emergency care setting of patients with  
 3 chronic pain and patients suspected as having a subarachnoid hemorrhage, his review of Mr.  
 4 Allen's medical records and chronic pain history, his opinions regarding the assessment and  
 5 treatment of Mr. Allen at ANMC on April 19, his assessment and opinions regarding Mr.  
 6 Allen's symptoms, condition, catastrophic SAH and fatal outcome on April 19, and his  
 7 chronology and timeline for Mr. Allen's likely diagnosis, treatment, medevac, and unfavorable  
 8 prognosis as a patient with a SAH in Anchorage, Alaska in 2003.

9       7.     Dr. Ronald F. Shallat (Expert witness)  
 10            Neurosurgeon  
 11            33 Evergreen Drive  
 12            Orinda, CA 94563  
 13            Phone: (925) 254-6627

14       Dr. Shallat has produced a written report and has been deposed. He is expected  
 15       to testify regarding the medical issues, information, and opinions that were included in his  
 16       report and/or that were raised during his deposition including his education, training, and  
 17       experience as a physician and neurosurgeon, his knowledge and experience regarding the  
 18       symptoms, condition, diagnosis, treatment, and outcomes for patients with a subarachnoid  
 19       hemorrhage, his review of Mr. Allen's medical records and chronic pain history, his  
 20       assessment and opinions regarding Mr. Allen's symptoms and condition at ANMC and his  
 21       catastrophic SAH and fatal outcome on April 19, his opinions regarding Mr. Allen's likely  
 22       unfavorable outcome as a patient with a SAH in Anchorage, Alaska in 2003.

1       8. Diane Duntze, R.N., A.N.P. (Expert witness)  
 2              Advanced Nurse Practitioner  
 3              HC01 Box 335  
 4              Gakona, AK 99586  
 5              Phone: (907) 822-5214

6              ANP Duntze has produced a written report and has been deposed. She is  
 7              expected to testify regarding the medical issues, information, and opinions that were included  
 8              in her report and/or that were raised during her deposition including her education, training,  
 9              and experience as a nurse and Advance Nurse Practitioner, her knowledge and experience  
 10             regarding the symptoms, condition, diagnosis, and treatment in the emergency care setting of  
 11             patients with chronic pain and patients suspected as having a subarachnoid hemorrhage, her  
 12             review of Mr. Allen's medical records and chronic pain history, and her opinions regarding  
 13             Mr. Allen's assessment and treatment at ANMC on April 19, 2003.

14       9. Dr. Richard A. Rubenstein (Expert Witness)  
 15              Neurologist  
 16              3220 Blume Drive, Suite 151  
 17              Richmond, CA 94806  
 18              Phone: (415) 924-1340

19              Dr. Rubenstein has produced a written report and has been deposed. He is  
 20              expected to testify regarding the medical issues, information, and opinions that were included  
 21              in his report and/or that were raised during his deposition including his education, training, and  
 22              experience as a physician and neurologist, his knowledge and experience regarding the  
 23              symptoms, condition, diagnosis, treatment, and outcomes for patients with a subarachnoid  
 24              hemorrhage, his review of Mr. Allen's medical records and chronic pain history, his opinions  
 25              regarding the assessment and treatment of Mr. Allen at ANMC on April 19, his opinions

1 regarding Mr. Allen's symptoms and condition at ANMC and his catastrophic SAH and fatal  
 2 outcome on April 19, and his opinions regarding Mr. Allen's likely unfavorable outcome as a  
 3 patient with a SAH in Anchorage, Alaska in 2003.

4       10. Paul Taylor (Expert Witness)  
       Economist  
       2245 Penrose Lane  
       Fairbanks, AK 99709  
       Phone: (907) 455-6037

5                     Mr. Taylor has produced a written report. He is expected to testify regarding the  
 6 opinions, information, and calculations in his report regarding the estimated past and future  
 7 economic losses for Mr. Allen and the past and future Social Security benefit payments for  
 8 Mrs. Allen and Presley Allen.

9  
 10                     **Witnesses That May Be Called At Trial**

11       1. Dr. Susan Dietz  
       Providence Alaska Medical Center  
       3200 Providence Drive  
       Anchorage, AK 99508  
       Phone: (907) 261-3111

12                     Defendant expects that it will question Dr. Dietz when she is called as a witness  
 13 during Plaintiff's case-in-chief. She is expected to testify regarding her examination and  
 14 treatment of Mr. Allen at Providence Alaska Medical Center on April 19, her contact with Mrs.  
 15 Allen, and her entries in the Providence medical records.

1           2. Dr. Loretta Lee  
 2           Providence Alaska Medical Center  
 3           3200 Providence Drive  
 4           Anchorage, AK 99508  
 5           Phone: (907) 261-3111

6           Defendant expects that it will question Dr. Lee when she is called as a witness  
 7           during Plaintiff's case-in-chief. She is expected to testify regarding her examination and  
 8           treatment of Mr. Allen at Providence Alaska Medical Center on April 19, her contact with Mrs.  
 9           Allen, and her entries in the Providence medical records.

10          3. Dr. Maria Freeman  
 11          ANMC Family Medicine Clinic  
 12          4315 Diplomacy Drive  
 13          Anchorage, AK 99508  
 14          Phone: (907) 563-2662

15          Defendant may call Dr. Freeman to testify regarding Mr. Allen's chronic pain  
 16          history and his contacts and medical records at ANMC's Family Medicine Clinic in 2000 to  
 17          2003 and his entry into the ANMC Chronic Pain Program in December 2002 and January  
 18          2003.

19          4. Dr. Tim Scheffel  
 20          ANMC UCC Medical Director  
 21          4315 Diplomacy Drive  
 22          Anchorage, AK 99508  
 23          Phone: (907) 563-2662

24          Dr. Scheffel has been deposed and he may be called to testify regarding the  
 25          general subjects and medical issues that he was questioned about at his deposition, including  
 26          his medical training and experience, his duties and experience as ANMC Medical Director for  
 27          the Urgent Care Clinic, the staffing and operation of ANMC's urgent care clinic, the intake,

1 triage, examination, and treatment of patients in the urgent care clinic, his knowledge and  
 2 experience regarding ANP Fearey's skills and work at the ANMC urgent care clinic, and the  
 3 information in the ANMC medical records regarding Mr. Allen's intake, triage, exam, and  
 4 assessment on April 19, 2003.

5. Any witnesses called by Plaintiff.

#### 6 **Witnesses That Are Unlikely To Be Called At Trial**

- 7 1. Dr. Eric Kohler  
 8 ANMC Neurosurgeon  
 9 4315 Diplomacy Drive  
 Anchorage, AK 99508  
 Phone: (907) 563-2662

10 Dr. Kohler would have information regarding the diagnostic and treatment  
 11 procedures available at ANMC in 2003 and the practices and procedures at ANMC for the  
 12 treatment of patients suspected of having a subarachnoid hemorrhage or aneurysm, including  
 13 the transfer and medevac of patients to other medical facilities.

- 14 2. Flossie Spencer or Jeff Ferris  
 15 ANMC Medical Records personnel  
 16 4315 Diplomacy Drive  
 Anchorage, AK 99508  
 Phone: (907) 563-2662

17 ANMC medical records' personnel would be able to authenticate ANMC's  
 18 medical records.

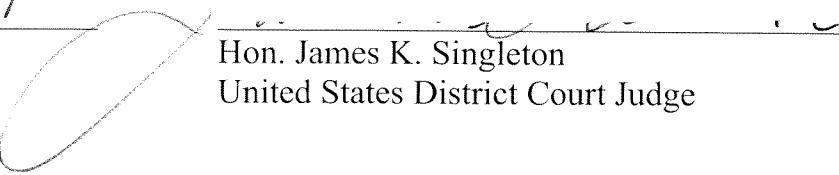
1                   **XII. EFFECT OF THIS ORDER**

2                   When finalized, this Proposed Pretrial Order shall supersede the pleadings and govern  
3                   the course of the trial of this cause, unless modified to prevent manifest injustice.

4

5                   **REDACTED SIGNATURE**

6                   DATED: 06/10/2007

7                     
Hon. James K. Singleton  
United States District Court Judge

8

9                   **CERTIFICATE OF SERVICE**

10                  I certify that on the 7 June 2007, a copy of the foregoing Joint Proposed Pretrial Order was  
11                  served electronically on:

12                  Gary M. Guarino  
13                  Assistant U.S. Attorney  
14                  Office of the U. S. Attorney  
15                  222 W. 7<sup>th</sup> Ave., #9  
16                  Anchorage, AK 99513-7567

17                  \_\_\_\_\_  
18                  /s/ Donna J. McCready

19                  W:\Allen v. USA\PLED\Proposed Pretrial Order (070606).doc